

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:14-cv-00550-FDW-DSC

JAYSON CONTINO, ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	CONSENT JUDGMENT
FRONTIER ADJUSTERS, INC., ET AL.,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on the parties' Joint Motion to Lift Stay and For Entry of Final Consent Judgment. (Doc. No. 40). The parties hereto have settled all claims and issues in this matter and have requested the Court to lift the stay of these proceedings and to enter the Consent Judgment Entry attached to their Motion (Exhibit A, Doc. No. 40). Accordingly, the parties' Motion is GRANTED.

By agreement and consent of the parties, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The stay of this action pending arbitration entered on November 7, 2014 is hereby lifted.
2. Plaintiffs Jayson and Mamye Contino ("Plaintiffs"), their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with them including, in particular, non-parties Southern Claims Adjusting, Inc. and Noya Corporation, are hereby enjoined and restrained from and ordered to:
 - A. Cease any use of Frontier Adjusters, Inc., intellectual property, including, but not limited to, the style, service marks and trade

names FRONTIER[®] and FRONTIER ADJUSTERS (with logo)[®] (the “Marks”);

- B. Deliver to Frontier Adjusters, Inc. or its designee all books, records, client lists, operating manuals, materials containing the Marks, and files pertaining to pending and completed assignments for customers of Frontier Adjusters, Inc.;
 - C. Cooperate with Frontier Adjusters, Inc. with respect to transferring control over the telephone and telecopier numbers utilized by Plaintiffs for the purpose of advertising their franchised locations;
 - D. Refrain, for a period of two (2) years from the date hereof, from directly, or indirectly, for themselves, or through, on behalf of or in connection with any other person, partnership, corporation, limited liability company or entity, including, but not limited to Southern Claims Adjusting, Inc. and Noya Corporation, from competing with Frontier Adjusters, Inc. or any of its franchisees within and for a distance of 100 miles outside of i) Raleigh/Durham, North Carolina; (ii) Greensboro/Burlington, North Carolina; (iii) Chapel Hill, North Carolina; (iv) Hickory/Statesville, North Carolina; (v) Asheville/Henderson, North Carolina; and (vi) Scranton/Wilkes-Barre, Pennsylvania (the “Advertised Locations”);
 - E. Refrain, for a period of two (2) years from the date hereof, from directly, or indirectly, for themselves, or through, on behalf of or in connection with any other person, partnership, corporation, limited liability company or entity, including, but not limited to Southern Claims Adjusting, Inc. and Noya Corporation, soliciting or attempting to solicit or causing to be solicited, for purposes of competing with Frontier Adjusters, Inc. or any of its franchisees, the business or patronage of any person, firm or other entity that is a customer or client of Frontier Adjusters, Inc. or any of its franchisees; and
 - F. Refrain, for a period of two (2) years from the date of the order, from directly, or indirectly, for themselves, or through, on behalf of or in connection with any other person, partnership, corporation, limited liability company or entity, including, but not limited to Southern Claims Adjusting, Inc. and Noya Corporation, hiring, soliciting for employment or causing others to solicit for employment, any person who is, or on February 16, 2015 was, employed by Frontier Adjusters, Inc.
3. Judgment is hereby entered in favor of Frontier Adjusters, Inc. and

against Plaintiffs, jointly and severally, in the amount of Seventy-Five Thousand Dollars (\$75,000.00), together with interest thereon from the date hereof and the costs of this action (the “Monetary Judgment”).

4. No execution shall issue on the Monetary Judgment for so long as Plaintiffs are in full compliance with their obligations under Paragraph 2 hereof. Furthermore, any monies actually recovered by Frontier Adjusters, Inc. (net of royalties) with respect to services performed by Plaintiffs (or their agents) for customers of Frontier Adjusters, Inc. prior to the date hereof and any proceeds actually received by Frontier Adjusters, Inc. (net of out-of-pocket expenses related thereto) with respect to the sale or assignment of the Advertised Locations (collectively, the “Credits”), shall be applied towards the satisfaction of the Monetary Judgment.

5. In the event Plaintiffs fail to fully comply with their obligations under Paragraph 2 hereof, Frontier Adjusters, Inc. shall file an Affidavit of Default with the Court (and serve a copy thereof on Plaintiffs at their last known address), which Affidavit shall generally describe Plaintiffs’ default(s) and provide an accounting of all Credits against the Monetary Judgment. Upon the filing of such an Affidavit, Frontier Adjusters, Inc. shall be free to execute on the full amount of the Monetary Judgment, together with interest thereon from the date hereof and the costs of this action, but less the Credits. If no Affidavit of Default is filed within two (2) years following the entry hereof, the Monetary Judgment shall be deemed satisfied.


6. Except as expressly set forth herein, all claims of all parties that were or could have been the subject of this action, are hereby dismissed, with prejudice, each party to

bear his, her or its own costs and attorneys' fees.

7. This Court shall retain jurisdiction over this action for enforcement of this Judgment.

IT IS SO ORDERED.

Signed: March 5, 2015


Frank D. Whitney
Chief United States District Judge



STIPULATED AND AGREED TO BY:

/s/Derek P. Adler
Derek P. Adler, Esq.
State Bar No. 39488

DeVore, Acton & Stafford, P.A
438 Queens Road
Charlotte, North Carolina 28207
Tel: 704.377.5242
Fax: 704.332.2825
Email: dadler@devact.com

s/Andrew J. Poltorak
Andrew J. Poltrack, Esq.
State Bar No. 44715

Ulmer & Berne LLP
1662 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
Tel: 216.583.7000
Fax: 216.583.7001
Email: apoltorak@ulmer.com

s/Derek J. Famulari
Derek J. Famulari, Esq.
Marks & Klein, LLP
63 Riverside Avenue
Red Bank, New Jersey 07701
Tel: 732.747.7100
Fax: 732.219.0625
Email: derek@marksklein.com

s/Stephen A. Markus
Stephen A. Markus, Esq.
Ulmer & Berne LL
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
Tel: 216.223.8774
Fax: 216.583.7105
Email: smarkus@ulmer.com

Attorneys for Plaintiffs

Attorneys for Defendants